Direct marketing code of practice - ICO consultation

Building Societies Association response

Restricted
04 March 2020

Building Societies Association

Introduction

The Building Societies Association (BSA) represents all 43 UK building societies, as well as 6 credit unions. Building societies have total assets of £415 billion and, together with their subsidiaries, hold residential mortgages almost £330 billion, 23% of the total outstanding in the UK. They hold over £280 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 37% of all cash ISA balances. They employ approximately 42,500 full and part-time staff and operate through approximately 1,470 branches.

We welcome the opportunity to respond to the Information Commissioner's Office (ICO) consultation on the draft direct marketing code of practice (the draft code).

Response

We have not responded to the questions in the ICO consultation paper. Instead, our response focusses on our members' concern that the requirements set out in the draft code may have a negative impact on financial product maturity communications to the detriment of customers. By "maturity communications" we mean contacting the customer to inform them that their current financial product is coming to the end of its term, that the interest rate will change (typically to the Standard Variable Rate in the case of mortgage products) and that the customer may wish to consider switching to a similar product with a different rate.

The draft Code states –

"You may need to send the individual a renewal or end of contract notice. These are unlikely to constitute direct marketing if neutrally worded and not actively promoting or encouraging the individual to renew or take on a further contract with you."

This would imply that informing the customer about other similar products offered by the building society or even the existence of a switching process in any maturity communications would constitute direct marketing under the draft code. Customers need to give consent to receive direct marketing unless the firm uses "legitimate interest" to show that the use of people's data is proportionate, has minimal privacy impact and is not a surprise to people or they are not likely to object to what you are doing.

If consent were needed, those customers who have not given consent would not be informed of their options and may remain on the revisionary rate potentially to their disadvantage. This goes against the stated aims of the Financial Conduct Authority (FCA) to encourage switching in the mortgage market. For example, the FCA is currently working with industry stakeholders on initiatives to help so called "mortgage prisoners" to remortgage onto different mortgage products. This includes communications to encourage customers to switch and their available options. Under the draft code, these well-meaning communications would be classed as direct marketing and could not be sent to customers without their consent, unless it could be argued that they fall within "legitimate interests".

We believe there is a strong argument that this type of communication, encouraging customers to switch and setting out their options including similar financial products, should fall within legitimate interests. Indeed, the three part test which makes up the legitimate interests assessment set out in the draft code would appear to back this up. However, we are concerned by the following extract in the draft code –

"It is sometimes suggested that direct marketing is in the interests of individuals, for example if they receive money-off products or offers that are directly relevant to their needs. This is unlikely however to add much weight to your balancing test, and we recommend you focus primarily on your own interests and avoid undue focus on presumed benefits to customers unless you have very clear evidence of their preferences."

This rather muddies the waters about the use of legitimate interests to justify sending out maturity communications with information on switching to other products which may be better for the customer. We would appreciate further guidance on this point.

We would not wish to see building societies and other financial institutions potentially facing ICO enforcement action for sending out communications which the financial services sector and its regulators have determined are for the benefit of the customer.

We would urge the ICO to liaise with the FCA about the potential impact of the draft code, as it appears to cut directly across the FCA's work to encourage switching. The BSA would be happy to contribute to any further discussions on the points raised in this response.

Please note that although we have primarily referred to mortgage products in our response, our comments apply equally to savings and other financial products.

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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £420 billion, and account for 23% of the UK mortgage market and 19% of the UK savings market.